

STATE OF MICHIGAN
COURT OF APPEALS

TRW VEHICLE SAFETY SYSTEMS, INC.,

Plaintiff/Counterdefendant-
Appellee,

v

PELLESTAR, LTD.,¹

Defendant/Counterplaintiff/Third-
Party-Appellee,

and

KENNETH MITAN,

Defendant/Counterplaintiff/Third-
Party-Appellant,

and

TRW, INC.,

Third-Party Defendant-Appellee.

UNPUBLISHED

March 20, 2003

No. 233856

Oakland Circuit Court

LC No. 98-009122-CK

Before: Markey, P.J., and White and Zahra, JJ.

PER CURIAM.

In this breach of contract case, defendant/counterplaintiff/third-party appellant² appeals by right the order of final judgment incorporating his settlement agreement with plaintiff³ and

¹ Pellestar, Ltd., did not file a response to this appeal.

² Kenneth Mitan, the appellant, is president of Pellestar, Ltd. Therefore, the term defendant refers only to Mitan, and defendant Pellestar, Ltd., will be referred to as Pellestar.

³ TRW Vehicle Safety Systems, Inc. (VSSI), is a subsidiary of TRW, Inc. We will refer to them collectively as plaintiff.

dismissing all claims with prejudice. Defendant claims that the settlement was procured by fraud and that plaintiff breached the confidential settlement agreement before it was entered by the court by informing the court that defendant had failed to execute a personal guaranty as required by the agreement. Defendant further claims that the trial court erred by deciding the fraud issue without an evidentiary hearing. We affirm.

VSSI and Pellet Industries entered into a contract in 1991. Pellet agreed to recycle unused vehicle airbag inflators. In 1993, Pellestar, Ltd., bought Pellet, and VSSI and Pellestar entered into a similar contract. In 1998, VSSI cancelled the contract, allegedly “for cause,” because Pellestar was not recycling the inflators as agreed. Plaintiff alleged that Pellestar invoiced plaintiff for recycling the inflators, even though Pellestar had not recycled them, and that VSSI paid these invoices. VSSI subsequently filed a multicount complaint naming Pellestar, Ltd., and Kenneth Mitan, Pellestar’s president, as defendants. Pellestar and Mitan each filed an answer to VSSI’s complaint and a countercomplaint. Pellestar also filed a third-party complaint against TRW, Inc., VSSI’s parent company.

After two years of discovery, plaintiff and defendant reached a confidential settlement the morning trial was scheduled to begin. The parties stated on the record that they had reached an agreement and memorialized it in a letter signed by the attorneys and approved by the parties. Several weeks later, plaintiff contacted defendant to exchange signature pages. Defendant repudiated the agreement. Plaintiff moved for entry of judgment incorporating the settlement, which was granted despite defendant’s allegations of breach of the confidentiality requirement of the settlement agreement and fraud. Defendant then moved for postjudgment relief, which was denied. The present appeal ensued.

Defendant first maintains that the trial court erred in failing to set aside the judgment on the basis of plaintiff’s breach of the confidentiality requirement of the settlement agreement. We disagree. The trial court’s decision on the motion for postjudgment relief is reviewed for an abuse of discretion. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 382; 533 NW2d 373 (1995). In civil cases, an abuse of discretion exists when the decision is so violative of fact and logic that it evidences a defiance of judgment and is not the exercise of reason, but rather, of passion or bias. *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992). Any factual findings necessary to the trial court’s decision are reviewed for clear error. MCR 2.613(C); *Giordano v Markovitz*, 209 Mich App 676, 678-679; 531 NW2d 815 (1995).

Here, defendant alleges that plaintiff breached the confidentiality requirement of the settlement agreement by stating in its motion for entry of judgment and at the motion hearing that defendant Mitan had failed to execute a personal guaranty as required by the settlement. Generally, “[t]he rule in Michigan is that one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform. However, that rule only applies when the initial breach is substantial.” *Michaels v Amway Corp*, 206 Mich App 644, 650; 522 NW2d 703 (1994) (citations omitted). The Michigan Supreme Court, in *Baith v Knapp-Stiles, Inc*, 380 Mich 119, 126; 156 NW2d 575 (1968), cautioned that

the words “substantial breach” in the ruling must be given close scrutiny. Such scrutiny discloses that the application of such a rule can be found only in cases where the breach has effected such a change in essential operative elements of the contract that further performance by the other party is thereby rendered

ineffective or impossible, such as the causing of a complete failure of consideration or the prevention of further performance by the other party. [Citations omitted.]

Both parties agree that the ten-page settlement agreement⁴ was confidential and that the agreement settled all claims in the underlying suit. The parties differ only regarding whether plaintiff's disclosure in its motion, in its reply briefs for entry of judgment, and at the motion hearing that defendant was required to execute a personal guaranty was a substantial breach of confidentiality.

Because plaintiff did not disclose the terms of the guaranty, only that one was required under the terms of the settlement, any breach of the agreement is not substantial. Plaintiff's disclosure that defendant had to execute a guaranty does not cause a complete failure of consideration. The extensive agreement settled all claims, counterclaims, and crossclaims. Further, the ten-page, single-spaced settlement agreement was painstakingly drafted after over two years of discovery and many days of facilitated negotiation by the special master. Moreover, no further information relating to the terms of the settlement was disclosed, nor does defendant indicate how the disclosure of the guaranty prevents his further performance of the agreement. In addition, plaintiff offered to seal the record regarding the motion for entry of the judgment, but defendant did not reply to that offer. We do not agree that the mere disclosure of the fact that the settlement required defendant to execute a personal guaranty, without any indication of its terms, which plaintiff disclosed *only* because defendant failed to execute this guaranty, constitutes a substantial breach of the agreement. Therefore, the trial court did not abuse its discretion by denying defendant's motion for postjudgment relief based on plaintiff's breach of the settlement agreement.

Defendant further argues that the trial court erred in failing to set aside the settlement agreement on the basis of fraud without holding an evidentiary hearing. We again disagree. The decision whether to hold an evidentiary hearing under MCR 2.119(E)(2)⁵ is reviewed for an abuse of discretion. *Williams v Williams*, 214 Mich App 391, 399; 542 NW2d 892 (1995).

Defendant alleges that plaintiff fraudulently induced him into entering into the settlement agreement. Defendant supports his claim with an affidavit alleging the elements of fraud. These elements are: (1) the party made a material representation; (2) the representation was false; (3) when the party made the representation, the party knew it was false or made it recklessly without knowledge of its truth; (4) the party made the representation with the intention that the other party would act on it; (5) the other party acted in reliance on it; and (6) the other party suffered

⁴ Neither party has provided this Court with a copy of the settlement agreement and has not offered to do so. Consequently, this Court can only decide this issue based on the parties' arguments.

⁵ MCR 2.119(E)(2) states:

When a motion is based on facts not appearing of record, the court *may* hear the motion on affidavits presented by the parties, or *may* direct that the motion be heard wholly or partly on oral testimony or deposition.

damages as a result. *Arim v General Motors Corp*, 206 Mich App 178, 195; 520 NW2d 695 (1994). While defendant articulates each of these elements, he fails to allege any facts to support them. Defendant states only that there was an “issue” about which plaintiff made “representations,” upon which he detrimentally relied. While a motion for postjudgment relief does not have to comply with the strict pleading requirements of MCR 2.112(B)(1),⁶ *Rapaport v Rapaport*, 185 Mich App 12, 16; 460 NW2d 588 (1990), specific allegations of fraud relating to a material fact must be provided, *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 405; 651 NW2d 756 (2002).

In *Yee, supra*, this Court concluded that the trial court did not abuse its discretion by denying the plaintiff’s motion for postjudgment relief without an evidentiary hearing, stating:

Generally, where a party alleges that a fraud has been committed on the court, it is “an abuse of discretion for the court to decide the motion without first conducting an evidentiary hearing into the allegations.” However, courts understandably look with skepticism upon a dissatisfied party’s claim of fraud and insist on strict factual proof. Thus, where the party requesting relief fails to provide specific allegations of fraud relating to a material fact, the trial court need not proceed to an evidentiary hearing. [Footnotes omitted.]

In this case, defendant offers no *factual* allegations of fraud. Although defendant claims that disclosure of the factual basis of his fraud claim would breach the confidentiality requirement of the settlement agreement, he did not and does not offer proof or suggest that the court view the agreement or a more detailed affidavit *in camera* to ascertain the validity of his fraud claim. Therefore, the court did not abuse its discretion in denying defendant’s motion for postjudgment relief on the basis of fraud without holding an evidentiary hearing.

Finally, defendant argues that the trial court erred in entering the final judgment incorporating the settlement agreement. We disagree. A decision whether to enforce a settlement agreement is reviewed for an abuse of discretion. See *Rinvelt v Rinvelt*, 190 Mich App 372, 382; 475 NW2d 478 (1991); *Groulx v Carlson*, 176 Mich App 484, 493; 440 NW2d 644 (1989).

“An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts.” *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). In addition, a settlement must comply with the requirements of MCR 2.507(H) to be enforceable. *Id.* MCR 2.507(H) provides:

An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party’s attorney.

⁶ MCR 2.112(B)(1) states that “[i]n allegations of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity.”

Here, the parties stated on the record that they had reached a confidential settlement agreement embodied by a ten-page letter signed by the parties' attorneys on the trial date. Further, the ten-page, single-spaced settlement agreement was painstakingly drafted after over two years of discovery and many days of facilitated negotiation. Defendant's counsel stated that he had a signature page signed by defendant agreeing to the settlement, and plaintiff's counsel indicated that plaintiff had orally accepted the settlement and would fax an authorized signature to that effect that day. Therefore, the settlement agreement is enforceable under both contract law and MCR 2.507(H).

Defendant nonetheless maintains that the judgment incorporating the settlement agreement should not have been entered because of plaintiff's breach of the confidentiality requirement of the agreement and fraud. This Court has stated that "litigants are not free to disregard a settlement agreement knowingly entered into on the court record and to which satisfactory evidence of mistake, fraud, or unconscionable advantage is not evident." *Groulx, supra* at 492.

In *Groulx, supra* at 493, this Court affirmed the trial court's denial of the defendants' motion to set aside the consent judgment they had agreed to on the record as settlement in a breach of contract action. As here, the defendants argued that the settlement was not binding because of fraud and other claims warranting relief under MCR 2.612(C)(1). *Groulx, supra* at 486. This Court found that

[t]he evidence in this case as revealed in the transcripts of the hearings on this issue in the court below, instead of suggesting mistake, fraud, or excusable neglect suggests that defendants, as stated by defense counsel, were unhesitating in their consent to the terms of the settlement agreement at the time the agreement was formally read into the record, but that shortly thereafter they had a "change of heart." A change of heart is normally insufficient to justify the setting aside of a settlement agreement. Any misgivings concerning the terms of the settlement agreement which defendants or defendants' counsel may have had were brought to the attention of the trial court only after the agreement had been formally entered in the record and only after defense counsel expressly informed the court that defendants specifically accepted the terms of the agreement. In view of the unambiguous assertions stated on the record at the [] proceeding by defense counsel regarding defendants' clear intention to be bound by the terms of the settlement agreement which was read into the record by plaintiffs' counsel at that proceeding, and *in view of defendants' failure to have supported their claims of mistake, fraud, and excusable neglect with satisfactory evidence of any kind*, we conclude that the trial court's decision precluding defendants from disavowing their obligations under the settlement did not constitute an abuse of discretion. [*Id.* at 492-493 (citations omitted; footnote omitted; emphasis added).]

Likewise, in this case, defendant's counsel unequivocally accepted on the record the confidential settlement agreement as set forth in the letter. Two weeks later, defendant repudiated the settlement agreement in a letter to plaintiff. Because defendant fails to support his allegations of fraud with any evidence and because plaintiff's disclosure that defendant had to

execute a personal guaranty as part of the agreement did not substantially breach the confidentiality requirement of the agreement,⁷ see *supra*, defendant's repudiation of the agreement appears to be a change of heart that "is normally insufficient to justify the setting aside of a settlement agreement." *Groulx, supra* at 492. Therefore, the trial court did not abuse its discretion by enforcing the settlement agreement.

We affirm.

/s/ Jane E. Markey
/s/ Helene N. White
/s/ Brian K. Zahra

⁷ Plaintiff did not disclose defendant's requirement of a personal guaranty until plaintiff filed its motion for entry of judgment, i.e., *after* defendant repudiated the agreement.